

United States District Court Southern District of Texas

Case Number: H-04-2387

ATTACHMENT

Description:

State Court Record State Court Record Continued

Administrative Record

Document continued - Part I of IV

Exhibit(s) number(s) / letter(s) Exh. # 106

Other: to Pltf's Amended Pet. Habeas Corpus

EXHIBIT 106

4 MS. BRORBY: Your Honor, plaintiffs at this time call

5 Dr. Craig Haney.

6 THE COURT: Come forward, sir, and please take the
7 oath. Raise your right hand.

8 CRAIG HANEY, M.D., PLAINTIFFS' WITNESS, SWORN

9 MR. ANASTASIADIS: Excuse me, Your Honor. Before we
10 begin, I have an objection that I care to make for the record
11 with the Court's indulgence to this witness being allowed to
12 testify at all. May I proceed?

13 THE COURT: Yes.

14 MR. ANASTASIADIS: Your Honor, the Defendant Texas
15 Department of Criminal Justice objects to this witness being
16 permitted to testify at this time on two bases. One is, as the
17 Court may or may not know, we took his deposition on Monday.
18 This past Monday, I personally took his deposition by telephonic
19 conference. And during the deposition, I was discussing with
20 him one of the issues that -- that appears on paragraph 31 of
21 his report, and that has to do with his conclusions that ad seg
22 inmates are not being properly monitored or diagnosed or treated
23 and there's a bunch of them that are in need of treatment and
24 that he interviewed them and he saw them at the cell and that

25 that's how he -- he formed his conclusions. I believe he said

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1 he talked to approximately less than 30 of them. As I asked him
2 that, I was very interested in who these inmates were, of
3 course, so we could check out and verify his opinions and what
4 he based them on. And he was not able to give me any names.
5 And at that time, he indicated he had taken some notes of the
6 interviews and that these notes were not with him at that time,
7 were in -- at his office. He was at home when he -- when he was
8 giving the deposition. He did not have those notes.

9 He has never provided them. I've never seen them. I
10 didn't have them at the time of deposition. He promised me that
11 he would bring them in when he flew in yesterday. I still have
12 not seen these notes, Your Honor, didn't have the benefit of
13 them during his deposition, don't have the benefit of them
14 today. And they were requested, as -- as were with all experts,
15 notes that the expert might have took that might shed light on
16 his database and on how -- on some of his opinions.

17 The second basis of the objection to this witness
18 being allowed to testify, Your Honor, is that he's not a medical

19 doctor or psychiatrist, has never treated a patient in his life.

20 He's not qualified to diagnose mental illness. He's no more

21 qualified to diagnose a -- a mentally ill inmate than Dr.

22 Frasier Crane on the fictional program Cheers or Dr. Laura, who

23 also has a radio program, I believe. This came out at his

24 deposition. What I --

25 THE COURT: Since I -- since I don't listen to radio

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1 and very seldom watch TV, you're talking about things I don't
2 understand.

3 MR. ANASTASIADIS: Your Honor, getting past that,
4 what -- let me tell you what I'm asking the Court to do. I
5 would like an opportunity to voir dire this witness to establish
6 two things, a Daubert challenge that he is not qualified to
7 diagnose mental illness, even though in his report he proceeds
8 to criticize the diagnostic and assessment tools of the Texas
9 Department of Criminal Justice. And number two, I would like to
10 make a record that this witness has some notes that he has never
11 provided as to interviews he did, identifying people,
12 identifying events, identifying summaries and things people told
13 him that he's not given to the defense.

14 This is just -- just like Mr. Allen Breed, Your Honor.
15 And the Court -- if I could refresh the Court's recollection on
16 that with Dr. Breed -- with Mr. Breed the Court gave us an
17 opportunity to look at his notes and then redepose him and
18 possibly recall him to trial. And I'm simply asking the Court

19 to do what it's already done in Mr. Breed's case: first, allow
20 me to make an -- give me an opportunity to make a record of this
21 improper behavior by this witness and, second of all, give me an
22 opportunity to depose him and then an opportunity to
23 cross-examine him after I have seen what's in these notes.

24 THE COURT: What says the plaintiffs?

25 MS. BRORBY: Your Honor, it is correct that Dr. Haney

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1 in his deposition disclosed the existence of notes that he did
2 not realize needed to be produced because they were not relied
3 upon by him in the course of preparing his report and that I did
4 not know existed at that time. And at that time, Dr. Haney said
5 that he would bring the notes with him, which he has done. I
6 did not think, in the rush of doing things last night, of
7 delivering the notes last night to counsel, although certainly,
8 as I do every night, I had some conversations with defense
9 counsel, although not this individual. And if somebody had
10 reminded me that I owed them Dr. Haney's notes, I would have
11 arranged for immediate delivery.

12 At this point, the -- the truth is that there are some
13 notes that I have never seen that Dr. Haney has brought with him
14 for inspection by defense counsel. I would note that this event
15 of overlooking something that needs to be provided to somebody
16 is something that's common in this litigation. It just doesn't
17 happen to be something that the plaintiffs bring up regularly,
18 because the plaintiffs have a different understanding than some

19 of counsel for defendants about the vagaries of this kind of
20 process under this kind of time pressure and realize that things
21 happen and then we just do the best we can to get by. For
22 example, I think two days ago we were notified of a new witness
23 who has never been on defendants' witness list who is going to
24 be called as a witness in this case on a very important matter,
25 and last night we were delivered two boxes, about four or five

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1 or more reams' worth of paper, of documentation that's going to
2 be the basis for the witness' testimony. I understand that
3 witness is due to be called today. And quite frankly, it's a
4 difficult task to take on a witness that you didn't know existed
5 before that you hadn't -- well, actually we did take the
6 deposition yesterday -- and to deal with thousands of pages of
7 use of force reports and try to use those in cross-examination.

8 But things happen and I'm not making a motion to
9 exclude that witness, because if it's important for that witness
10 to put on the evidence in court about use of force from the
11 defendants' perspectives, I think they're entitled to call that
12 witness. I'm going to try to cross-examine that witness today.
13 And if I find it absolutely necessary, I will confer with
14 defendants and see if the witness can be provided for further
15 cross-examination based on the documents after I have a chance
16 to review them.

17 But despite the record that the defendants are making
18 in this case, there is -- at this point I think the record -- if

19 you look at the expert reports that have been filed with the
20 Court by January 15th and the expert reports that are in the
21 discovery, at this point the plaintiffs have provided the
22 defendants much, much, much, much, much more information about
23 the work their experts have done and the basis for their
24 experts' conclusions than has been provided by the defense
25 counsel in this case. So I vigorously oppose the motion to

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1 block this witness' testimony. I think that that would not be
2 in keeping with the basic rules and understandings we have been
3 operating on in the course of this trial that is under such time
4 pressure. And I think it would be unfair and wrong to exclude
5 this witness' testimony.

6 We will be happy to make the witness available for a
7 telephonic deposition, as we're doing with Mr. Breed, if counsel
8 finds more questions to ask, based on the handwritten notes,
9 that don't come to counsel's mind based on the report that
10 counsel now has long had.

11 MR. ANASTASIADIS: I do have a response if the Court
12 cares to hear it.

13 THE COURT: All right. Make it short.

14 MR. ANASTASIADIS: Your Honor, very briefly, very
15 short, the response is that the defense is at a severe
16 disadvantage to challenge conclusions this witness has made that
17 there are mentally ill ad seg inmates that are going untreated
18 without knowing the names of these people, who they are and

19 being able to verify his conclusions independently of a paid
20 witness' testimony. We didn't have that benefit at the
21 deposition. We don't have it now. We're at a disadvantage.
22 Further, Ms. Brorby has failed to address the second problem
23 with this witness. And that's the Daubert problem, this -- this
24 man is simply not qualified to --

25 THE COURT: Well, that's a question for the Court to

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1 determine. You can state that, but it's a question for the
2 Court to determine whether or not he's qualified.

3 MS. BRORBY: Your -- Your Honor --

4 MR. ANASTASIADIS: Yes, Your Honor.

5 MS. BRORBY: -- I failed to respond to that point
6 earlier, and I would note that it is not --

7 THE COURT: We're wasting -- we're taking a lot of
8 time on this objection. Go ahead.

9 MS. BRORBY: Maybe this needs to be dealt with at a
10 later time. But we do not propose to have doctor -- we had
11 psychiatrists testify about the diagnosis of psychiatrically ill
12 patients in administrative segregation, and that will not be
13 the purpose of Dr. Haney's testimony. Dr. Haney is a
14 psychologist, and he does have a greater expertise than most
15 people in this room to recognize mental illness. And he will
16 speak from the expertise he does have about what he observed in
17 administrative segregation, but he won't be giving the kind of
18 technical, psychiatric, expert, diagnostic kind of testimony

19 that we've relied upon our psychiatrists for. I can assure

20 counsel of that.

21 THE COURT: Well, there's a certain merit in the

22 defendants' objections. I can understand that they would like

23 to know and have the right to know who he talked to. Suppose

24 you go ahead and present the witness, and the defendant may

25 cross-examine based on what information he has now. If there is

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1 a -- he is to be furnished with these notes. If there is a need
2 at some future time in his opinion to redepose the witness and
3 to ask him further questions on cross-examination, we'll give
4 him that lead to do so. Now, that's going to have to be done
5 very shortly, because we have one more week after this.

6 MS. BRORBY: Yes, Your Honor.

7 THE COURT: All right. Let's go ahead. And the
8 objection as to whether or not the witness is qualified is
9 overruled. The Court will make that determination.

10 DIRECT EXAMINATION

11 BY MS. BRORBY:

12 Q. Dr. Haney, will you state your name for the record?

13 A. Yes. My name is Craig William Haney.

14 Q. Where do you live, Dr. Haney?

15 A. In Santa Cruz, California.

16 Q. And where do you work?

17 A. I work at the University of California, the Santa Cruz
18 campus.

19 Q. What kind of work do you do there?

20 A. I'm a psychology professor and -- and chair of the
21 psychology department there.

22 Q. Within the field of psychology, what is your particular
23 area of expertise?

24 A. Well, I'm trained as a social psychologist, and my area of
25 expertise is actually something called psychology and law, which

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1 is the application of psychological principles and data to legal
2 issues and -- and legal settings. That's the sort of general
3 description of it. Within that broad area, I have concentrated
4 on a couple of different issues.

5 Q. And -- and what -- what areas within psychology and law
6 have you concentrated your research and writing time?

7 A. Well, I've looked at the social and institutional histories
8 of people accused of and convicted of violent crime. And I've
9 also spent an extensive amount of time studying how people
10 adjust and adapt to institutional settings, primarily adult
11 maximum security prisons, and over about a 25-year period of
12 time looked at what, for lack of a better term, will be called
13 prison behavior, both the behavior of people in prison and also
14 to a certain extent how prisons themselves react and change over
15 time and in response to various pressures in the -- in the
16 surrounding society and within the correctional system itself.

17 Q. In my question I inquired particularly about your research
18 and writing. And have you done research and writing in the area

19 that you just mentioned of adjustment and adaptation to
20 institutions and the behavior of people in prison and prisons?

21 A. Yes. It was in many ways the first academic interest I had
22 in this area, and I've been doing research and writing about
23 prison behavior, adaptation to prison, the effects of
24 incarceration, for about 25 or more years.

25 Q. When you say it was one of your first academic interests,

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1 was it something that you were working on in the 1970s?

2 A. It was something that I actually began working on in the
3 very beginning of the 1970s. I -- I entered graduate school in
4 1969, and this was an issue that I began to study almost --
5 almost immediately the next year.

6 Q. There's been some reference during the testimony in -- in
7 this case to something that's been called the Zimbardo study
8 that apparently is from the 1970s. Is that something you
9 know -- know anything about?

10 A. Yes, I was one of the experimenters in the study, and
11 Phillip Zimbardo was my graduate adviser. And he and I and
12 Curtis Banks were the three people who conducted this study and
13 have written extensively about it since. I guess it's fair to
14 say I have probably written most about it since we actually
15 conducted the study. It's remained an interest or an area of
16 mine, not so much for Zimbardo or Banks, but it has for me.

17 Q. Can you describe briefly what you learned in the Zimbardo
18 study or what -- what's the teaching of that study?

19 A. Well, the teaching of the study, I think, has a couple of
20 components to it. I guess the most important one of which is
21 that the -- the basic relationship between prisoners and guards
22 is one which has a potentially very destructive dynamic to it.
23 If -- if it is allowed simply to unfold, the differences of --
24 of power that exist between prisoner and guard have a tendency
25 to pull in opposite directions, and -- and very destructive

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1 consequences can occur fairly quickly.
2 The other lesson, also a broad one, is that
3 environments matter and that people are shaped and transformed
4 by the environments that they enter in -- in such a way that
5 people -- people begin to manifest or produce behavior which is
6 very different in an unusual environment from anything they've
7 ever done in the free world. So we saw in this study, for
8 example, people who had not behaved aggressively, had not
9 mistreated people before they entered this study, fairly quickly
10 begin to engage in this kind of behavior in -- in response to
11 the pressures in the situation itself. So it's commonly
12 referred to along with a whole host of other studies in social
13 psychology and sociology as demonstrating that the profound
14 impact and influence of -- of certain kinds of powerful
15 environments, particularly in institutional settings, to change
16 and transform people.
17 Q. You referred in the course of your discussion just now to
18 the potential for a destructive dynamic in the basic

19 relationship between prisoners and guards. Is a part of that
20 destructive dynamic the incidence of aggressive behavior that
21 might not have been anticipated based on other factors?
22 A. Well, that's certainly true. It's true -- was true in the
23 specific instance of this study, and it's been true in my study
24 of prisons and prison systems for the 25 years following this
25 study that absent intervention, absent oversight, absent

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1 constant monitoring of the treatment of inmates by correctional
2 officers, and to a certain extent vice versa, this dynamic is
3 fraught with tension, and it is fraught with destructive
4 potential.

5 Q. As a psychologist, can you shed any light about why the
6 dynamic?

7 A. Well, there's -- there's an old saw that comes not out of
8 psychology, but actually out of philosophy, that power corrupts
9 and absolute power corrupts absolutely. And I think there's
10 some wisdom to that. It's also the case that prisons are
11 difficult for people to live in. They're difficult for people
12 to work in.

13 THE COURT: That comes from Lord Acton. That's as
14 much as I know.

15 THE WITNESS: Yes, sir, it does. And -- and -- and so
16 the tensions that build up inside have no -- typically have no
17 natural outlet. These are confined spaces by definition. And
18 so the interpersonal dynamic tends to be concentrated inside

19 those spaces.

20 The ordinary avenues that people in the free world can

21 take when they -- when they confront a difficult situation are

22 not available to people who are confined in prison. If you or I

23 are having a problem with somebody at work, we can typically

24 arrange to avoid them, or a problem with a neighbor and, in an

25 extreme case, you can move, or you can take a different route

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1 down your street to go home and so on. And this -- this way of
2 avoiding problems is something that we take for granted in the
3 free world. But it's very difficult to do in a -- in the
4 concentrated environment of prison where there's an immediacy to
5 the interaction and also an unavoidability to it. And so when
6 tensions begin to build up, they tend -- they tend to be
7 directed across -- across the interaction rather than disbursed
8 elsewhere in the institution. And so the dynamic is one which
9 requires, as I said, constant monitoring. And it is one of the
10 reasons why -- why prisons are places where there are instances
11 or episodes of behavior that take place that don't occur with a
12 great deal of frequency in the free world, for example, forms of
13 mistreatment, brutality and so on.

14 THE COURT: I didn't hear your last comment. Forms of
15 what?

16 THE WITNESS: Mistreatment, brutality and -- and so
17 on.

18 BY MS. BRORBY:

19 Q. You said one thing that went right over my head and other

20 people might have missed it, too. I'll try to point you to it.

21 Something about expressing something across a dynamic rather

22 than disbursing it someplace?

23 A. Yes. I mean, it has to do with what your degrees of

24 freedom are, where -- whether you can -- whether you can avoid

25 confrontation or conflict. You have -- and this is certainly --

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1 I mean, I want to describe this in a way that -- that
2 acknowledges that both sides of this interaction are limited in
3 terms of -- in terms of the freedom that they have to avoid
4 conflict or problems. You -- you -- you -- people who are
5 confined in prison have to figure out ways of, if you will,
6 dealing with each other and -- and have very few options to
7 avoid interacting with each other or interacting with people who
8 are -- who are problematic or with whom they have difficulties.
9 And so the -- the tension oftentimes tends to build up between
10 them. And because of the power balance or the -- the way
11 in which one side of this interaction tends to have far more
12 power than the other, the potential, the potential - and I -- I
13 really do want to emphasize that - for abuse is ever-present.
14 Q. In the dynamic around power, is there a sort of action and
15 reaction? Is that part of what the studies show in terms of the
16 potential for destructive interactions between prisoners and
17 guards?
18 A. Yes. That -- that's absolutely true. And then it's --

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19 it's underscored or intensified by the fact that people who are
20 in prison typically don't want to be there. And they're not
21 easy places to live in typically. And they don't bring out
22 necessarily the best in people. And so this action/reaction
23 dynamic is one which occurs and recurs frequently in -- inside a
24 prison environment. Put somewhere in more basic terms,
25 prisoners are not at their best, they sometimes behave in ways

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1 that are problematic or offensive to guards, who then try to
2 address the behavior, reduce the offensive quality of the
3 interaction, and conflict ensues and it -- and it ensues
4 oftentimes at a much higher rate than it does elsewhere in
5 society.

6 Q. Can you summarize, you know, just so we sort of established
7 what it was, just basically what happened in the Zimbardo study?

8 What was the experiment and -- and what happened?

9 A. Well, it was an experiment in which we were attempting to
10 measure or assess the effects of the environment itself as
11 opposed to the interaction between people's characteristics and
12 the environments that they enter. So we selected people on the
13 basis of psychological health abnormality. They were screened
14 in advance along those dimensions, and then they were randomly
15 assigned either to be prisoners or guards. And they entered a

16 simulated prison environment in which we had set up
17 opportunities to observe and to collect data periodically over
18 what we anticipated would be about a two-week period of -- of

19 incarceration. But -- but the results of the study were so
20 dramatic and -- and indeed the -- the environment itself was far
21 more powerful than anything we had anticipated or predicted that
22 the study was terminated after only six days because the
23 reactions of the people in the study were so extreme.

24 Q. Was there an ethical reason at that point for terminating
25 the study?

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1 A. There was certainly an ethical reason. The -- the extremes
2 of behavior had exceeded anything that we had anticipated. What
3 happened -- we were -- we were frankly concerned about the
4 safety of the people in the prison. It is probably a study that
5 should have been ended earlier, frankly. But -- but we were --
6 we were so taken off guard by this -- the unexpected extremes of
7 the behavior that I -- that I think in retrospect we didn't
8 react quickly enough.

9 Q. Can you describe a little bit about the basic demographics
10 of your subjects who participated in this study?

11 A. They were college student volunteers who were living in the
12 Palo Alto area in the summer of 1971. They were paid \$15 a day
13 for their participation. They were all Caucasian, with the
14 exception of one Asian participant. And they averaged 19, 20,
15 21 years old.

16 Q. Was it a --

17 A. All male.

18 Q. Was it a -- and you said that you created a simulated

19 prison environment. Can you just describe the basics of that?

20 A. Sure. We remodeled the -- a basement area in the

21 psychology department building, Jordan Hall, at Stanford

22 University. And so we took the -- the regular doors off of

23 several laboratory rooms. They were transformed into cells, so

24 bar doors were placed instead. We put cots in the -- in the

25 laboratory rooms themselves where the -- where the prisoners

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1 stayed. There was an area, a hallway outside of the -- of these
2 cells or laboratory rooms that were -- a hallway that was
3 cordoned off. That became essentially the cellblock area.
4 There was a large table inside that cellblock area that was used
5 for -- for meals. And we dressed the prisoners and the guards
6 in uniforms. And then we had an orientation meeting in which
7 the guards developed some rules and regulations that were to be
8 implemented the next day. We told the guards that one basic
9 rule that we would enforce was that we did not want any physical
10 mistreatment of the prisoners. And then with -- with all of
11 those things in mind, we proceeded.

12 The prisoners were apprehended by the Palo Alto police
13 at their homes, brought to the -- brought to the Stanford
14 prison -- they -- they were -- they were anticipating this --
15 brought to the -- brought to the Stanford prison and then we
16 began a new processing procedure. And they were housed in their
17 cells. As I said, they were anticipating, as were the guards,
18 that this -- that this study would go for 14 days. We had ten

19 prisoners, and we had three guards on each of three eight-hour
20 shifts.

21 Q. Was the rule against physical mistreatment of prisoners
22 observed?

23 A. No, it was not. It was broken. We became aware of this
24 only at the very end of the study when we -- when we debriefed
25 or talked to the prisoners and -- and the guards about what had

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1 happened. We certainly, by the end of the study, had gotten a
2 sense that the tensions between the guards and the prisoners
3 were so dramatic and -- and the relationships had deteriorated
4 so much that there was the potential that this was happening,
5 but it wasn't apparent to us until we -- until we talked to both
6 sets afterwards.

7 Q. Has there been research since the Zimbardo experiment that
8 confirms the conclusions that you drew earlier about it?

9 A. Well, there has been a lot of research in a lot of
10 different disciplines which confirms the basic points, namely
11 that social environments or situations are powerful and can
12 transform people so that when people enter extreme environments,
13 particularly the institutional environments, they sometimes
14 engage in behavior that they have never engaged in before or
15 will since and also that -- that prison environments
16 particularly, because of the issues that I talked about a few
17 minutes ago, that the imbalance of power and the nature of the
18 tensions and so on are particularly potent environments to -- to

19 intensify this dynamic.

20 Q. That was something of a sidetrack from discussing your
21 education and background and work in the fields that lead you to
22 be an expert witness today. So let me go back to having you
23 describe -- why don't we start with your educational
24 qualifications.

25 A. I have a bachelor's degree in psychology from the

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1 University of Pennsylvania. After that, I went to graduate
2 school in psychology at Stanford, got a master's degree, I
3 think, around 1971, continued in the Ph.D. program at Stanford,
4 mid 1970s became interested enough in legal issues that I
5 actually attended and then graduated from Stanford Law School.
6 So I have a Ph.D. in psychology from Stanford and a J.D. degree
7 from the Stanford Law School.

8 Q. And at this time I think you said you're a professor of
9 psychology and a chair of the department of psychology at the
10 University of California, Santa Cruz campus.

11 A. Yes.

12 Q. And have you been working in the academic world in your
13 field that you've described from about 1969 until now --

14 A. Yes.

15 Q. -- steadily?

16 A. Yes. Consistently.

17 Q. Has your work been exclusively academic, or have you had
18 opportunity to be inside real prisons?

19 A. No, I've had an opportunity to study, observe, interview
20 people inside of real prisons, which I began to do not long
21 after the -- the Stanford prison study that we -- that we
22 described. I was very much influenced by that study, and -- and
23 it crystallized for me an interest in institutional behavior.
24 And it -- it was obviously a simulation with -- with limited
25 implications for the real world but which limited indications I

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